IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 27893 of 2007(U)

AGAINST THE ORDER IN OS .179/2004 AND O.S.212/2004 of MUNSIFF COURT, MAVELIKKARA

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PETITIONER:

JOHNY,
PUNNASSERIL, KARAZHMA PADINJATTUM MURI,
CHENNITHLA VILLAGE.

BY ADV. SRI.R.KRISHNA RAJ

RESPONDENT:

K.C.GEORGE,
PUNNASSERIL, KARAZHMA PADINJATTUM MURI,
CHENNITHLA VILLAGE.

BY ADV. SRI.BECHU KURIAN THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.27893/2007 U

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE OBJECTION TO COMMISSION REPORT DTD. NIL.**

EXT.P2: **COPY OF THE I.A.NO.2258/2006 DTD. 27/11/2006.**

EXT.P3: **COPY OF THE I.A.NO.201/2007 DTD. 25/01/2007.**

EXT.P4: **COPY OF THE I.A.1721/2007 DTD. 07/09/2007.**

1ST RESPONDENT'S EXHIBIT:

EXT.R1(A): **COPY OF THE OBJECTION DTD. 10/09/2007 IN I.A.NO.1721/97.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 27893 OF 2007

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Dated this the 1st day of October, 2007.

J U D G M E N T

This writ petition is filed seeking to stay the trial of O.S.179/04 and O.S.212/04 till the order dated 12.9.07 in I.A.1721/07 is served on the petitioner and direct the Munsiff Court, Mavelikara to consider I.A.2258/06 and I.A.201/07 before further proceeding with the trial in the suit O.S.Nos.212/04 and 179/04. A quarter dozen of applications has been filed on the eve of the trial of the suit, one slightly earlier with so many prayers, when the suit is listed and that has resulted in this unpleasant situation.

2. I am informed that some witnesses are also examined. But at the same time when applications which goes into the root of the matter are filed before the Court, necessarily the Court has to consider it at first and then only proceed with the trial. I.A.2258/06 is filed with a prayer to set aside the Commissioner's plan and report. I.A.201/07 was filed for issuance of an order to the Superintendent of

Survey to produce some sketch and I.A.1721/07 which has been filed for removing the suit from the list. It is true that the order in I.A.1721/07 is not before Court but at the same time it has to be stated that though the adjournment petition is dismissed the suit is still pending consideration. Therefore, the non-production of the order may not go into the root of the matter in the writ petition. But at the same time it was not correct on the part of the Court below to have commenced the trial without passing an order in I.A.2258/06 which is one for setting aside the Commissioner's plan and report. When a petition of that nature is filed evidence may be necessary and after appreciating the materials available the Court may or may not set aside the Commissioner's plan and report and if it happens to set aside the Commissioner's plan and report, necessarily it follows a fresh Commission has to be issued and therefore the suit cannot be proceeded with. So, when such is the situation it would not be right on the part of the Court to post the I.A. along with the suit itself wherein the

trial has already commenced. Therefore, I direct the Munsiff, Mavelikara to consider I.A.2258/06 by permitting the parties to adduce evidence in that application and in the event of him finding that there are grounds to set aside, then consider whether I.A.201/07 will have any bearing and if necessary, pass appropriate orders therein after receiving the same. The learned Munsiff shall defer the trial of the suit till a final decision is taken in I.A.2258/06. The writ petitioner is directed to co-operate with the Court and adduce evidence in that application within a reasonable time fixed by the Court and the Court after hearing both the sides shall dispose of the matter in accordance with law and the application for setting aside the Commissioner's plan and report may, at any rate, be disposed of within a period of one month from today.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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